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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CHYN, AILEEN

ART UNIT PAPER NUMBER

3715

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,602

Applicant(s)

FRANKLIN, PATRICIA

Examiner

Aileen Chyn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05/30/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to communications through the applicant's amendment filed on 05/30/2006. Claims 1-32 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-32 are rejected under 35 U.S.C. 103(a) as being anticipated by Rogers et al., "Rogers" (US Pat. Pub. 2005/0137015 A1) in view of Stuart et al., "Stuart" (US Pat. Pub. 2004/0121295 A1) and further in view of Cook et al., "Cook" (US Pat. Pub. 2002/0168621 A1).

With regards to claim 1, Rogers discloses a system...comprising:

a simulation ... including a plurality of characters, the user role-playing one of the characters (abstract, "interactive game having a customizable avatar... and a gaming module configured to provide a game environment allowing participants ... with the virtual characters through simulated experiences"); and

a collaboration opportunity in which the user is capable of collaborating with others over the computer system (abstract, "allow a participant...an instant messaging

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communication module configured to allow the participant to communicate with the game environment and with other participants”).

However Rogers does not explicitly disclose a mentoring opportunity in which the user is capable of receiving mentoring over the computer system based on the user's actions in the simulation.

Stuart discloses a system wherein the user is capable of receiving mentoring over the computer system based on the user's actions in the simulation (page 5, section [0041], “When selecting food, the simulation program 10 automatically displays information pop-up 154 to provide information on how the insulin pump operates while eating and impacts dining.”, wherein “POP-UP 154” is analogous to a “MENTORING OPPORTUNITY” and “SELECTING FOOD” is analogous to “USER’S ACTIONS IN THE SIMULATION”; Figure 5, element 130 discloses a “MENTORING OPPORTUNITY”).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a system of a mentoring opportunity as disclosed by Stuart into the e-learning simulation system as disclosed by Rogers to provide to provide the target customer with an understanding of how the promoted product can dramatically impact and improve the daily life of the target customer (section [0006]) and also to render behavioral reinforcement (section [0044]). One of ordinary skill in the art would be motivated to make the aforementioned combination with reasonable expectation of success.

Claim 2 is rejected for the reasons set forth hereinabove for claim 1 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above

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in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein...the selection of the scenario having a positive or negative outcome for the role-played character in the simulation (Stuart, Figure 8, (element 172) discloses a selection of a scenario having a positive or negative outcome in the simulation wherein the "DIABETES" is analogous to the "LEARNING OBJECTIVE").

Claim 3 is rejected for the reasons set forth hereinabove for claim 1 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein the mentoring opportunity is from a MetaMentor (Stuart, Figure 5, wherein element 120 is analogous to "METAMENTOR").

Claim 4 is rejected for the reasons set forth hereinabove for claim 1 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein the mentoring the user is capable of receiving in the mentoring opportunity is a synchronous event (Rogers, page 11, section [0154], "Instant messaging is also the communication platform for interacting with other participants, for example, by sharing, trading and purchasing of objects among the participants. In short, instant messaging therefore provides the underlying communication platform for the entire system 300."; Stuart,

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page 5, section [0041], wherein, "INSTANT MESSAGING" is analogous to a "SYNCHRONOUS EVENT"

Claim 5 is rejected for the reasons set forth hereinabove for claim 4 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein the synchronous event is an on-line chat or instant message ... (Rogers, page 11, section [0154]).

Claim 6 is rejected for the reasons set forth hereinabove for claim 5 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein the at least one other person is represented by an Avatar on the computer system (Rogers, abstract).

Claim 7 is rejected for the reasons set forth hereinabove for claim 5 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein the at least one other person is represented by an emoticon on the computer system (Rogers, page 2, section [0021] "Some of the instant messaging service providers are offering both sponsored and subscription versions of customized "emoticons" (little emotive icons such as a smiley face or a "thumbs up"). ").

Claim 8 is rejected for the reasons set forth hereinabove for claim 1 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein the mentoring the user is capable of receiving in the mentoring opportunity is an asynchronous event (Stuart, page 3, section [0032], "...the simulation program 10 may generate ... foreshadowing information for a future scene 74, an information pop-up 76, a behavioral reinforcement pop-up 78, a contrast character 80, and navigation icons 82 and 84 to enable the user to move the virtual patient 54 through scenes... the simulation program 10 may generate and render an information pop-up 76 that displays relevant information concerning the medical therapy that is related to the virtual patient's 54 actions within the virtual environment 50... The information pop-up 76 may enable access to further information on the medical therapy being promoted by the simulation program 10.. ", wherein, the "INFORMATION POP-UP" is analogous to "ASYNCHRONOUS MENTORING OPPORTUNITY").

Claim 9 is rejected for the reasons set forth hereinabove for claim 8 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein the asynchronous event is a stored informational resource (Stuart, page 3, section [0032], "...The information pop-up 76 may enable access to further information on the medical

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therapy being promoted by the simulation program 10.. ", wherein, the "INFORMATION" is analogous to "STORED INFORMATIONAL RESOURCE").

Claim 10 is rejected for the reasons set forth hereinabove for claim 8 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein the informational resource is a Bot (Stuart, Figure 3, Element 80, wherein "CONTRAST CHARACTER" is analogous to "BOT").

The subject matter of claim 11 is rejected in the analysis above for claim 1, and furthermore the combination of Rogers and Stuart disclose a system wherein the MetaMentor further having associated stored knowledge, experience and information (Stuart, Figure 6, element 142 depicts the MetaMentor having stored knowledge and information; Rogers, page 8, section [0125], ""Experiences" are games or tasks that the participant can complete in order to receive a reward comprising enhancements to the participant's avatar, inventory or status within the online community...participants will be forced to trade or cooperate with each other to complete experiences requiring these items.").

The combination of Rogers and Stuart does not disclose expressly the MetaMentor representing a famous person.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use a famous person to represent a MetaMentor because Applicant has not disclosed that using a famous person is used

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for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with information, behavioral reinforcement pop-ups as depicted by a character or a contrast character to share knowledge, experience and information (Stuart, sections [0033]-[0035]).

Therefore, it would have been an obvious matter of design choice to modify the combination of Rogers and Stuart to obtain the invention as specified in claim 11.

Claims 12-14 are rejected for the reasons set forth hereinabove for claim 11 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein the MetaMentor mentoring the user upon the user performing an action resulting in a poor, positive and neutral result for the role-played character (Stuart, page 3, section [0032], "Occasionally the simulation program 10 may generate and render information....related to the virtual patient's 54 actions"; page 3, section [0033], "A behavioral reinforcement pop-up 78 renders information communication positive reinforcement when the user engages in a positive action... a behavioral reinforcement pop-up 78 may be displayed to acknowledge such "general" desirable behavior.", wherein, "BEHAVIORAL REINFORCEMENT" is analogous to "POSITIVE"; "GENERAL" is analogous to "NEUTRAL"; Figure 5, element 130 discloses a mentoring when user is performing a "NEUTRAL" action; Figure 8, element 172, presents questions to the user, if the user

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selects the wrong action, additional mentoring will be provided, wherein "WRONG" is analogous to "POOR").

Claims 15-16 are rejected for the reasons set forth hereinabove for claim 11 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system further comprising hidden objects representing inventions of the MetaMentors which may become obtainable upon the user making an optimal selection at a decision point in the simulation (Stuart, Figure 7, element 147; Rogers, page 6, section [0081]; page 8, section [0125], wherein, "COOPERATE... TO COMPLETE EXPERIENCES REQUIRING THESE ITEMS" is analogous to "ITEMS BECOME OBTAINABLE UPON USER MAKING AN OPTIMAL SELECTION"; Rogers, page 8, section [0127], wherein, "RARE ITEM" is analogous to "HIDDEN OBJECTS").

Claim 17 is rejected for the reasons set forth hereinabove for claim 11 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein physical replicas of the objects may be provided as merchandise ... as collectable souvenirs of the experience (Rogers, page 12, section

[0171], "station panel 700 may receive system message informing the player of a special item for sale or the receipt of a reward for completing an experience."; Rogers, page 5, section [0065]; and Rogers, page 6, section [0078], wherein "OFFLINE

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PRIZES” are analogous to “COLLECTABLE SOUVENIRS”; Rogers, page 6, section [0071]-[0087], wherein, depending on the goals of the user, souvenirs are collected; Rogers, page 6, section [0088], “purchasing books or music would require Artistic points.”, wherein, “BOOKS AND MUSIC” are analogous to “BOOKS OR MUSIC”).

The subject matter of claim 21 is rejected in the analysis above for claims 1 and 11.

Claim 22 is rejected for the reasons set forth hereinabove for claim 21 and on grounds corresponding to the reasons given above for claim 4.

Claim 23 is rejected for the reasons set forth hereinabove for claim 22 and on grounds corresponding to the reasons given above for claim 5.

Claim 24 is rejected for the reasons set forth hereinabove for claim 23 and on grounds corresponding to the reasons given above for claim 6.

Claim 25 is rejected for the reasons set forth hereinabove for claim 23 and on grounds corresponding to the reasons given above for claim 7.

Claim 26 is rejected for the reasons set forth hereinabove for claim 21 and on grounds corresponding to the reasons given above for claim 8, wherein “RECEIVING MENTORING OPPORTUNITY” inherently “ALLOWS THE USER TO ACCESS KNOWLEDGE”.

Claim 27 is rejected for the reasons set forth hereinabove for claim 26 and on grounds corresponding to the reasons given above for claim 9.

Claim 28 is rejected for the reasons set forth hereinabove for claim 27 and on grounds corresponding to the reasons given above for claim 10.

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Claim 29 is rejected for the reasons set forth hereinabove for claim 21 and on grounds corresponding to the reasons given above for claim 26 and furthermore the combination of Rogers and Stuart disclose a system... allows the user to share information with at least one other source over the network (Rogers, Figure 2 depicts a distributed computer network; Rogers, page 3, section [0023])

Claims 30 and 31 are rejected for the reasons set forth hereinabove for claim 29 and furthermore the combination of Rogers and Stuart disclose a system wherein the at least one other source comprises a different geographical location and a different organizational department of an organization to which the user belongs (Rogers, page 2, sections [0015] and [0016], wherein, "IM SOFTWARE" is analogous to an "ORGANIZATION", "MESSAGING WORLDWIDE" is analogous to "DIFFERENT GEOGRAPHIC LOCATIONS" and "CO-WORKER" is analogous to "DIFFERENT ORGANIZATIONAL DEPARTMENT OF AN ORGANIZATION").

Claim 32 is rejected for the reasons set forth hereinabove for claim 21, on grounds corresponding to the reasons given above for claim 29 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 1 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers and Stuart disclose a system wherein information shared by the user via the mentoring and collaboration portal comprises at least one of a ... product information ... and uncovering best business practices for dealing with customers and business partners (Stuart, abstract, "providing information on a promoted product to a user...virtually experience how the promoted product is capable of impacting daily

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activities of the user and to promote the product", wherein, "PROMOTE THE PRODUCT" is analogous to "BEST BUSINESS PRACTICES FOR DEALING WITH CUSTOMERS...").

The subject matter of claim 18 is rejected in the analysis above for claims 1, 11 and 21, and furthermore the combination of Rogers and Stuart disclose a system comprising

a self-assessment in which the user is accessed through a series of questions presented to the user (Rogers, page 6, section [0071], "The participants of the game...create their own goals...", wherein "CREATING THEIR OWN GOALS" inherently requires a "SELF-ASSESSMENT");

However, the combination of Rogers and Stuart do not explicitly disclose the simulation, the characters and/or the stored information that is presented to the user being at least in part dictated by an assessment.

Cook discloses the simulation, the characters and/or the stored information that is presented to the user being at least in part dictated by an assessment (page 3, section [0017], "...it accepts direct interactions as well as using the history of previous student performance stored in a student data object...it accepts data on assigned courses, data on analysis of student body performance, and educational standards and criteria... these inputs allow individualization of agent interaction.", wherein, "INDIVIDUALIZATION OF AGENT INTERATION" is analogous to "SIMULATION, CHARACTERS AND/OR STORED INFORMATION" and "STUDENT PERFORMANCE" is analogous to "ASSESSMENT").

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a system of the simulation, the characters and/or stored information dictated by an assessment as disclosed by Cook into the system for learning based on game simulation and interaction among a plurality of characters as disclosed by the combination of Rogers and Stuart to provide for each student an agent adapted to that student which monitors its student's instructional behavior, responds to teacher direction, and controls the instructional progress, and guides its student (page 1, section [0001]). One of ordinary skill in the art would be motivated to make the aforementioned combination with reasonable expectation of success.

Claim 19 is rejected for the reasons set forth hereinabove for claim 18 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 18 and therefore the examiner maintains the same line of reasoning and furthermore the combination of Rogers, Stuart and Cook disclose a system wherein the simulation including one or more scenes which include one or more frames which include one or more assets (Stuart, Figure 3, elements 82 and 84 disclose "ONE OR MORE SCENES"; Stuart, page 2, section [0024], "render video information", wherein each scene has a video and wherein a "VIDEO" inherently has "ONE OR MORE FRAMES"; and Figure 7, wherein depicts an "INSULIN PUMP" which is analogous to "ONE OR MORE ASSETS").

Claim 20 is rejected on grounds corresponding to the reasons given above for claims 18 -19 and is also rejected for the reasons set forth hereinabove for the same limitations as set forth above in claim 18 and therefore the examiner maintains the same

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line of reasoning, wherein "SIMULATION, CHARACTERS AND/OR STORED INFORMATION" inherently possess "SCENES, FRAMES AND ASSETS").

Response to Arguments

4. Applicant's arguments regarding claims 1-32 have been fully considered but they are not persuasive.

5. Regarding the declaration filed on 05/30/2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Rogers reference. 37 CFR 1.131 requires that the Applicants point out or map each claim limitation in all the pending claims into the evidence. The three declarations submitted do not provide a sufficient evidence of the applicants' conception of the claimed invention prior to August 19, 2003, the date of the reference, Rogers.

Applicants should duly note that "The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. **Vague and general statements in broad terms** about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F .2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by the applicant. 505 F .2d 718-19, 184 USPQ at 33. See also In re Harry, 333 F .2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts the facts exist but

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does not tell what they are or when they occurred.”) (MPEP 715.07, I General Requirements).

Applicants are reminded that Conception is the mental part of the inventive act, but it must be capable of proof, as by drawings, complete disclosure to another person, etc. In *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897), it was established that conception is more than a mere vague idea of how to solve a problem; the means themselves and their interaction must be comprehended also (MPEP 715.07, III Three ways to show Prior Invention).

For example in claim 1, the limitations “a simulation ...including a plurality of characters”, “a mentoring opportunity...”, and “a collaboration opportunity ...” are not mapped to corresponding portions of the applicant’s submitted declarations and the examiner does not find sufficient support in the declarations for the aforementioned claim limitations. The three declarations, Declaration of Patricia Franklin, Declaration of Kenneth Ecklund, Declaration of Fred Borchardt, merely provide a general description of very high-level concept of the inventive subject matter. However such printout does not indicate how the claim language corresponds to the applicant’s disclosure.

Regarding the applicants’ statement that the present invention was conceived of before the earliest filing date of Rogers, the examiner disagrees. It is important to note that constructive reduction to practice can only be achieved by filing a U.S. application or a foreign priority application with full 112 first support.

This evidence is insufficient to establish reduction to practice, or conception of the invention prior to the effective date (8/19/2003) of the Rogers reference.

Moreover, proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose. (MPEP 715.07, III Three ways to show Prior Invention). However no such evidence has been supplied.

In determining the sufficiency of a 37 CFR 1.131 affidavit or declaration, diligence need not be considered unless conception of the invention prior to the effective date is clearly established, since diligence comes into question only after prior conception is established. *Ex parte Kantor*, 177 USPQ 455 (Bd. App. 1958) (MPEP 715.07(a)).

Furthermore, the period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses. *Rebstock v. Flouret*, 191 USPQ 342, 345 (Bd. Pat. Inter. 1975); *Rieser v. Williams*, 225 F.2d 419, 423, 118 USPQ 96, 100 (CCPA 1958). (MPEP 2138.06) An applicant must account for the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966).). (MPEP 2138.06) There is no detail, nor evidence to establish diligence.

Applicants arguments that claims 1-32 are not anticipated by the reference Rogers reference based on the declaration under 37 C.F.R. §1.131 have been fully considered but they are not persuasive. As reasons stated above, the three declarations do not provide a sufficient evidence of the applicants' conception of the claimed invention prior to August 19, 2003, the date of the reference, Rogers. Therefore, the examiner maintains the rejection of claims 1-23.

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6. Furthermore, with regards to the declaration of Patricia Franklin, page 2, item 6 of the declaration, "Many years prior to August 19, 2003...". The term "many years" is defined as "more than one year". In accordance to the MPEP:

2131 [R-1] Anticipation — Application of 35 U.S.C. 102(a), (b), and (e)

35 U.S.C. 102. Conditions for patentability; novelty and loss of right to patent.

A person shall be entitled to a patent unless ...

(a) the invention **was known or used by others in this country**, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, **more than one year** prior to the date of application for patent in the United States ...

Henceforth, the inventor Patricia Franklin concedes that more than one year prior to August 19, 2003, she disclosed the merits of the invention to a member of the public. Therefore, Patricia Franklin has voluntarily lost her right to patent by making the merits of the application public knowledge.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aileen Chyn whose telephone number is 571-272-7176.


The examiner can normally be reached on M-F 8:30-5:00.

Contact Information

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571)272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

8/16/2006
A.C.

 8/21/06
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